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PROPOSED PROGRAMME BUDGET FOR THE BIENNIUM 1996-1997

Conditions of service and compensation for officials other than Secretariat officials

Members of the International Court of Justice

Revised estimates under section 5

Extension of the premises of the International Court of Justice

Twelfth report of the Advisory Committee on Administrative and Budgetary Questions

I. INTRODUCTION

1. The Advisory Committee on Administrative and Budgetary Questions has considered two reports of the Secretary-General, one on the emoluments and other conditions of service for the members of the International Court of Justice (ICJ) (A/C.5/50/18), and the second on the extension of the premises of the Court (A/C.5/50/19). During its consideration of the reports, the Advisory Committee met with representatives of the Secretary-General and with the Registrar of the Court, who provided additional information.

II. CONDITIONS OF SERVICE AND COMPENSATION FOR MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE

2. The report of the Secretary-General on emoluments and conditions of service for the members of the Court was submitted pursuant to General Assembly resolution 48/252 A of 26 May 1994. The report reviews the issues of periodic adjustments of the emoluments and other benefits of the members of the Court, including a review of the current pension scheme and, as requested by the Advisory Committee, an analysis of the practice of the Court with respect to

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Article 16 of the Statute of ICJ. The issue of periodicity of reviews is also addressed in the report. In the report the Secretary-General states his view that the three-year cycle of review, established by the General Assembly in its resolution 45/250 A of 21 December 1990, is the most appropriate under the circumstances. The Advisory Committee concurs with this view.

Remuneration

3. As indicated in the previous report of the Advisory Committee on the conditions of service of ICJ members (A/49/7/Add.11, para. 5), the revised annual salary that went into effect on 1 January 1991 incorporated in the previous annual compensation of the members of the Court ($82,000) the previously granted cost-of-living supplement for The Hague ($19,750). Table 1 of the report of the Secretary-General (A/C.5/50/18) shows changes in the net remuneration of members of the Court, and table 2 indicates movements in gross emoluments of officers of national judiciaries in selected countries. As indicated in paragraphs 4 and 5 of the report, the emoluments of the members of the Court are sui generis.

4. The Advisory Committee notes from paragraph 8 of the report that, in accordance with resolution 48/252 A, the system of floor/ceiling exchange rates continued to be applied to members of the Court in order to regulate their emoluments against the weakening/strengthening of the United States dollar vis-a-vis the Netherlands guilder. For the year 1995, by applying the established formula of 4 per cent above and 4 per cent below the average exchange rate of the previous year, the floor/ceiling exchange rates used were 1.75 and 1.89 guilders per dollar, based on the average exchange rate for 1994 of 1.82 (see A/C.5/50/18, table 3). For 1996, the Advisory Committee was provided with updated information of floor/ceiling exchange rates of 1.55 and 1.67 guilders per dollar, based on the average exchange rate of 1.61 guilders per dollar in 1995.

5. With respect to the information provided in paragraph 11 of the report, the Advisory Committee is not convinced that, over the period from January 1991 to June 1995, the emoluments of the members of the Court have been eroded by some 20 per cent, as the effect of local currency appreciation and lower local inflation rates in The Hague appear not to have been fully taken into account in the analysis.

6. The Advisory Committee notes from paragraph 12 of the report that the Secretary-General is of the opinion that the annual emoluments of members of the Court should be maintained at the current level of $145,000. The Advisory Committee agrees with the view of the Secretary-General in this respect. However, the Advisory Committee recommends that, should the current mechanism used to regulate emoluments against the weakening/strengthening of the dollar be considered inadequate, the Secretary-General make proposals in this regard, bearing in mind the various studies that have been made on this issue in the recent past. The Advisory Committee also recommends that the Secretary-General address the issue of residence and non-residence status of the members of the Court as it impacts on their salary and other conditions of service, as well as the need to issue rules and procedures that regulate the administration of the benefits of the members of the Court.

Other conditions of service

7. The Advisory Committee notes from paragraphs 15 and 16 of the report that the Secretary-General recommends no change in the current level of the special allowances of the President of the Court ($15,000 per year) and the Vice-President when acting as President ($94 per day, up to a maximum of $9,400 per year). The Advisory Committee concurs.

8. The Advisory Committee notes from paragraph 21 of the report that the Secretary-General proposes that the increase in the level of the education grant (including that for disabled children) applicable to staff in the Professional and higher categories, approved by the General Assembly in resolution 49/223 of 23 December 1994, be extended, under the same conditions, to the members of the Court, as from the school year in progress on 1 January 1995. The Advisory Committee agrees with the proposal of the Secretary-General, on the understanding that this benefit be extended only to the members of the Court who have taken up residence at The Hague.

9. The Advisory Committee notes from paragraphs 34 and 35 of the report that the financial implications of the education grant proposal would amount to $11,700; however, should the proposal of the Secretary-General be approved by the General Assembly, the Advisory Committee notes that the Secretary-General proposes "to absorb the requirements to the extent possible, within the resources proposed for such purpose, in paragraph 5.12 (b) of the 1996-1997 proposed programme budget, since revision to the level of resources might be warranted as the term of office of five Judges comes to an end during the biennium 1996-1997" (A/C.5/50/18, para. 35).

10. With regard to the participation of members of the Court in health insurance plans of the United Nations system, which are currently available to staff in the Professional and higher categories that may wish to participate, the Advisory Committee understands, from the information provided in paragraph 23 of the report and from representatives of the Secretary-General, that the members of the Court would cover the total cost of their participation and that the Organization would not have to contribute at all to the cost of their participation. In this regard, the Advisory Committee does not have any objection to their participation, provided that the members of the Court meet the same requirements for participation as those met by the full-time members of subsidiary bodies who are participants in the health insurance plans at their own cost.

Pensions

11. Pursuant to the request of the Advisory Committee, the Secretary-General has submitted, as an annex to document A/C.5/50/18, a review by a consulting actuary of the pension scheme of the members of ICJ. The Advisory Committee notes from paragraph 27 of the report that in the light of the conclusions of the actuarial review, the Secretary-General has concluded that "the consulting actuary corroborates in technical terms most of the recommendations he presented to the General Assembly at its forty-eighth session (A/C.5/48/66)". The Advisory Committee points out that it did not have the benefit of the consulting

actuary's presence and that the Registrar was unable to answer all the questions pertaining to the consultant's report.

12. The Advisory Committee believes that the various recommendations and options discussed in the report of the consulting actuary should have been analysed in the main text of the report of the Secretary-General. In particular, the rationale for the recommendations of the Secretary-General, as mentioned in paragraphs 27 (a) to (f) of the report, should have been explained in the main text of the report and cross-referenced to the corresponding paragraphs in the report of the consulting actuary in the annex.

13. The Advisory Committee notes, for example, that the recommendation in paragraph 27 (a) has not been explained in relation to the key findings of the consulting actuary, as set out in paragraphs 1.7 and 3.1 of the annex. Upon inquiry, the Advisory Committee was informed that "the reference to 'pensionable remuneration of a Judge' refers to the 'pension benefit' or 'retirement benefit' of a Judge, which should be based on half the annual salary of the member of the Court".

14. The Advisory Committee recommends that the Secretary-General re-examine the pension scheme of the members of the Court in a report that takes full account of the request of the Advisory Committee, as indicated in paragraph 12 above.

15. As regards the analysis of the practice of the Court with respect to Article 16, paragraph 1, of the Statute of ICJ, the Advisory Committee notes with appreciation the analysis presented in paragraphs 29 to 33 of the report. The Advisory Committee has considered this issue at some length. The Advisory Committee raised a number of questions, several of which, to some degree, still remain unanswered, including the following: the extent of outside remunerated activities engaged in by the Judges; the time spent on those activities; the payment received for those activities; the extent of the use of the Court facilities, including staff for those activities; the issue of disclosure of remuneration received from those activities; and the need for guidelines on these issues. The Committee recalls Article 16 of the Statute of ICJ (quoted in para. 29 of the report of the Secretary-General), in particular paragraph 2 of that Article. In this connection, the General Assembly may wish to consider inviting the Court to look again at this issue in the light of the observations and concerns of the Advisory Committee. The General Assembly may also wish to invite the Court to communicate its reaction in such a manner as the Court may deem appropriate at the earliest possible opportunity.

III. EXTENSION OF THE PREMISES OF THE INTERNATIONAL COURT OF JUSTICE

16. In accordance with the request of the Advisory Committee in its first report on the proposed programme budget for the biennium 1996-1997, 1/ the Secretary-General submits in his report (A/C.5/50/19) the budget estimates for the enlargement of premises available to the Court. During its consideration of this item, the Committee was informed that the revised requirements for the biennium 1996-1997, for which an appropriation is sought, is $331,400; furthermore, it is now estimated that the new premises would be available to the

Court by 1 January 1997, instead of by mid-1996, as had been indicated in the proposed programme budget for the biennium 1996-1997.

17. With regard to the space utilization mentioned in paragraph 7 of the report, the Advisory Committee was informed that approximately 70 per cent of the total number of available rooms in the Peace Palace are allocated to ICJ and that of the total space of the Peace Palace (11,723 square metres), the space of 7,736 square metres, or approximately 66 per cent, is provided to the Court by the owner and administrator of the Peace Palace, the Carnegie Foundation of the Netherlands.

18. In terms of costs, the Advisory Committee was informed that the contribution requested by the Foundation for 1996-1997 to cover total estimated operational expenses of the Peace Palace was approximately 21.2 per cent for the biennium (1,263,582 guilders in 1997, or $722,047 at the rate of f. 1.75 per US$). The Committee was furnished with a statement of the total expenses of the Peace Palace for 1993 and budget estimates for 1995 to 1997 (see annex). It was also mentioned that the corresponding contribution for the new premises of 3,987 square metres, to be occupied in 1997, is 580,000 guilders (or $331,428 at the rate of f. 1.75 per US$). Thus, for 1997, the total annual contribution payable by ICJ to the Carnegie Foundation is 1,843,582 guilders (or $1,053,475 at the rate of f. 1.75 per US$), under the terms of the supplementary agreement shown in the annex to document A/C.5/50/19.

19. The Advisory Committee notes from paragraph 19 of the report that the proposed amount of 1,843,582 guilders is "subject to annual changes relating to inflation". The Advisory Committee requested information on the index of inflation to be used; however, the information was not made available. The Advisory Committee, therefore, understands that the provision for inflation will be subject to review by the Advisory Committee and approval by the General Assembly each time it is requested. The Committee further notes that, although this provision was not included in previous amendments to the agreement concluded between the United Nations and the Carnegie Foundation on 21 February 1946 (see A/C.5/50/19, para. 4), subsequent increases over the years in the United Nations contributions were approved by the General Assembly on the basis of changes in the rate of inflation. As indicated in paragraphs 4 and 19 of the report, the last supplementary agreement entered into by the United Nations and the Carnegie Foundation was approved by the General Assembly under the terms of resolution 1343 (XIII) of 13 December 1958, by which the annual contribution was increased to 100,000 guilders ($57,143 at the rate of f. 1.75 per US$), with effect from 1 January 1959, as a consequence of increased costs of maintenance of the Peace Palace. Thereafter, the subsequent increases up to 1,843,582 guilders attributable to inflation were approved by the General Assembly without supplementary agreements.

20. Upon request, the Advisory Committee was provided with information on the distribution of the additional space of 3,987 square metres. This includes 2,050 square metres in the new wing (1,135 square metres for 39 additional offices in the attic of the Peace Palace and 802 square metres of additional storage space). A copy of the floor plans furnished to the Advisory Committee will be issued as an addendum to the present report. For the reasons stated in paragraphs 9 to 15 of the report, the Advisory Committee believes that the

additional space of 3,987 square metres is warranted for the operations of the Court, in particular from medium- and long-term perspectives. The Advisory Committee also believes that the conditions under which the Carnegie Foundation of the Netherlands proposes to continue to provide space to ICJ under the supplementary agreement should be accepted by the General Assembly. The Advisory Committee points out, however, that the General Assembly was not informed in advance of the need to acquire additional space. The Committee trusts that in the future the proper procedure will be followed and that work on such projects will not commence until the necessary legislative approval is obtained.

21. The Advisory Committee recalls that in paragraph III.11 of its first report on the proposed programme budget for the biennium 1996-1997, 1/ it recommended that the provision of $457,400 related to the enlargement of premises available to the Court be deleted, pending the report that is now being submitted by the Secretary General. The Advisory Committee notes that the appropriation sought of $331,400 would represent a partial reinstatement of the provisional estimate of $457,400 at 1994-1995 prices or $484,900 at 1996-1997 prices included under paragraph 5.22 of the proposed programme budget for the biennium 1996-1997. 2/ The Advisory Committee therefore recommends that the General Assembly approve the appropriation of $331,400 to provide for additional accommodation for the Court by the Carnegie Foundation. The Committee understands that the appropriation sought is to cover operating expenses only (i.e., no funds are requested for capital expenditures) and that the issue of cost adjustment related to inflation remains to be clarified (see para. 19 above).

Notes

1/ Official Records of the General Assembly, Fiftieth Session, Supplement No. 7 and corrigendum (A/50/7 and Corr.1).

2/ Official Records of the General Assembly, Fiftieth Session, Supplement No. 6 (A/50/6 and Rev.1).

ANNEX

Carnegie Foundation

Statement of the expenses of the Peace Palace (including the additional operating costs for the building designed for the Judges of the International Court of Justice)

(In Netherlands guilders)

	Actual expenditure over 1993	Prognosis expenditure of 1994	Provisional budget for 1995	Preliminary budget for 1996	Preliminary budget for 1997
a. Salaries, social security contributions, pension charges and pension allowances	2 751 908.00	2 506 890.00	2 560 590.00	2 675 820.00	2 796 232.00
b. General and office expenses	91 854.00	185 000.00	185 000.00	193 325.00	202 025.00
c. Maintenance of the Peace Palace (buildings)	270 522.00	270 000.00	270 000.00	282 150.00	294 847.00
d. Large-scale repairs of the Peace Palace	355 262.00	434 000.00	524 000.00	547 580.00	572 221.00
e. Heating and lighting	283 379.00	350 000.00	350 000.00	365 750.00	382 209.00
f. Maintenance of the park	50 000.00	50 000.00	50 000.00	52 250.00	54 601.00
g. Library of the Peace Palace (books, subscriptions, bookbinding)	1 485 000.00	1 781 000.00	1 485 000.00	1 551 825.00	1 621 657.00
h. Fire insurance premiums	40 000.00	40 000.00	40 000.00	41 800.00	43 681.00
i. Miscellaneous - large-scale maintenance, new telephone system, major renovation of the facade of the building for the Judges		878 750.00	-	-	-
	5 327 925.00	6 495 640.00	5 464 590.00	5 710 500.00	5 967 473.00